

1 The Honorable John H. Chun
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
AMAZON.COM, INC., *et al.*
Defendants.

Case No. 2:23-cv-0932-JHC

**PLAINTIFF'S MOTION FOR
EXCESS FACT-WITNESS
DEPOSITIONS**

NOTE ON MOTION CALENDAR:
September 18, 2024

1 This case is significantly more complex than the ordinary case to which Rule 30's
 2 default, ten-deposition limit applies. Defendant Amazon is one of the largest companies in the
 3 world and employs over 1.5 million people. The practices at issue date back at least seven years,
 4 to 2017. The FTC's allegations relate to several different processes by which consumers may
 5 enroll in and cancel Amazon Prime, one of the world's largest subscription programs. In 2021,
 6 Amazon estimated "well over 500 Amazon employees" had performed work on Prime
 7 enrollment or cancellation—a number that undoubtedly has increased in the last three years.
 8 Those employees are spread over several different teams and worked on several different
 9 projects related to Prime enrollment and cancellation.

10 In light of these facts, the FTC seeks an expansion of the 10-deposition limit to allow it to
 11 conduct 35 fact-witness depositions, significantly less than the 150 fact-witness depositions (80
 12 depositions of party witnesses and 70 of nonparty witnesses) this Court permitted the parties to
 13 conduct in the *FTC v. Amazon* antitrust matter. *See Order re: Deposition Limits, FTC v.*
 14 *Amazon.com, Inc.*, No. 23-cv-1495-JHC, Dkt. No. 166 (Feb. 20, 2024). To date, the FTC has
 15 identified, to Defendants, 22 witnesses it plans to depose, in addition to identifying the pool of
 16 people from which it expects to select 13 additional deponents, after it has had more time to
 17 review, *inter alia*, Amazon's recent productions of hundreds of thousands of documents.
 18 Amazon opposes the FTC's request, and refuses to move ahead with scheduling more than 15
 19 fact depositions, based primarily on meritless arguments that the depositions will be cumulative
 and that the FTC must identify all deponents now. The complexity and importance of the case,
 however, is more than sufficient to justify the FTC's request for 35 depositions.

20 **I. BACKGROUND**

21 **A. The FTC's Pre-Complaint Investigation**

22 For the reasons explained *infra* pp. 9-10, the FTC's investigation has little, if any, bearing
 23 on this motion. Nevertheless, because Defendants have relied on the investigation to oppose the
 FTC's request, the FTC briefly discusses it here.

1 During its investigation of Amazon, the FTC, as in any investigation, sought to determine
 2 (1) whether it had reason to believe Defendants violated any laws enforced by the Commission,
 3 (2) which individuals or entities were responsible for any such violations, and (3) what claims
 4 the Commission, in its prosecutorial discretion, would assert against the Defendants. With those
 5 goals in mind, the Commission served Amazon with document requests in March 2021. Ex. A
 6 ¶ 3.¹ In the 18 months that followed, the company produced less than 11,000 documents from
 7 eight document custodians. *Id.* ¶ 4.

8 In early July 2022, based on the limited information it had received from Amazon to that
 9 point, the FTC issued civil investigative demands for investigational hearings (effectively,
 10 administrative depositions) from several current or former Amazon employees. Ultimately, the
 11 FTC conducted 34 IHs. Eight of those 34 IHs were of executives² who claimed to have little
 12 knowledge or recollection of the relevant issues. Two other less senior, but supervisory-level,
 13 employees³ also expressed little knowledge or recollection of the issues. Another six IHs—of
 14 corporate designees selected by Amazon—occurred over a single, seven-hour day, and related
 15 either to non-Prime subscription services or ESI and production issues. The FTC also took
 16 testimony from the three Individual Defendants and 15 current or former employees selected
 17 from among the hundreds who had worked on Prime enrollment or cancellation. Many of those
 18 witnesses were in the relevant roles for limited periods of time or only worked on limited aspects
 19 of Prime enrollment and cancellation. The goal of the IHs was not to develop the evidence
 20 necessary to prove the FTC’s as-yet-unasserted claims by a preponderance of the evidence, but
 21 rather to determine whether to file a Complaint and, if so, which claims to bring and which
 22 defendants to name.

23

¹ Exhibit A to this Motion is the August 28, 2024 Declaration of Olivia Jerjian, which has been filed at Dkt. #185.

² These witnesses were Jeff Bezos, Andrew Jassy, Doug Herrington, Cem Sibay, David Clark, Greg Greeley, Sebastian Gunningham, and Dharmesh Mehta.

³ These witnesses were Sharon Chiarella and Sara Klainer.

1 Both when selecting these witnesses (in July 2022) and when questioning them (from
 2 July 2022-January 2023), the FTC had far more limited information than it does now. For
 3 example, after producing just 11,000 documents between March 2021 and September 2022,
 4 Amazon produced 19,000 documents between October 2022 and February 2023. Ex. A ¶ 4.
 5 Even that number is minuscule compared to the almost 500,000 documents Amazon has
 6 produced to date in this litigation (*id.*), which were, of course, unavailable to the FTC during the
 7 investigational hearings. During the investigation, moreover, Amazon frequently provided the
 8 limited documents it did produce immediately before witnesses' IHs. For example, in June
 9 2022, the FTC requested IH testimony from Prime user experience ("UX") designer C.R. Brown.
 10 Ex. A ¶ 6. At that time, Amazon had produced no documents from Mr. Brown's custodial files.
 11 *Id.* ¶ 7. Amazon later produced a total of 185 documents from Mr. Brown's files, with 180 of the
 12 documents being produced just five days before Mr. Brown's November 2022 IH and the
 13 remainder produced after the deposition. *Id.* ¶ 8. During this litigation, Amazon has produced
 14 an additional 8,000 documents from Mr. Brown's files. *Id.* ¶ 9.

15 **B. The FTC's Depositions in This Litigation**

16 To date, the FTC has taken five depositions in this litigation: (1) Amazon's current
 17 Director of US Prime Member Growth (Lisa Leung), who assumed that role in 2022; (2) a Senior
 18 Manager (Rex Morey) in the US Prime organization responsible for tracking US Prime business
 19 performance, including monitoring the results of "clarity" improvements to the Prime enrollment
 20 process that Amazon made, and then reversed, in 2020 (*see, e.g.*, Dkt. #139-1 at 128; Dkt. #69
 21 ¶¶ 214-217); (3) the lead Product Manager (Neel Malhotra) on Amazon's 2021 clarity efforts
 22 (Dkt. #139-1 at 128); (4) another Product Manager (Michael Bruhanov) who managed Amazon's
 23 efforts to ensure Prime's member balance did not decrease when Amazon made changes to the
 enrollment flow for IT-related reasons in 2021-2022; and (5) an Amazon executive (Llew
 Mason) responsible for the company's Shopping organization (which oversees consumers'

1 shopping experience on the Amazon website) and who participated in many of the significant
 2 clarity-related escalations described in the FTC's Complaint (*see* Dkt. #69 ¶¶ 188-230).

3 Five other depositions are scheduled for the next three weeks and will therefore occur at
 4 around the same time this Motion is fully briefed: (1) Linnea Hagen and (2) Miles Hunter, both
 5 of whom are UX researchers who worked within the Shopping organization, including on the
 6 Customer Frustrations Elimination Program described in the FTC's Complaint (Dkt. #69 ¶¶ 188-
 7 201), and personally conducted user testing relating to the Prime enrollment flows at issue;
 8 (3) Sanjay Balakrishnan, Director of Prime Product Management until late 2020, who directly
 9 reported to Defendant Jamil Ghani (Ex. A., Att. 2 at 2); (4) Anthony Boulis, who was the Prime
 10 Finance "point of contact" for 2021 clarity work, in which role he projected the financial impact
 11 of various changes to the Prime enrollment and cancellation flows (Dkt. #139-1 at 128); and (5)
 12 Bharath Srinivasan, the former Global Product Head for Amazon Prime membership growth,
 13 who, until mid-2023, led "product management for Prime member acquisition, retention, [and]
 14 cancel prevention." Ex. A ¶ 26.

15 Additionally, the FTC is deposing Individual Defendants Jamil Ghani, Russell
 16 Grandinetti, and Neil Lindsay in November, and Amazon also has consented to the FTC taking
 17 depositions of two current or former Amazon employees located overseas. The FTC is
 18 evaluating whether and how the international depositions can proceed in compliance with the
 19 laws of the countries in which the witnesses are located and, if necessary, the Hague Convention
 20 on the Taking of Evidence Abroad in Civil or Commercial Matters.

21 Finally, the FTC has identified seven other witnesses (bringing the total number of
 22 identified witnesses to 22) who it will depose if it prevails on this Motion. Amazon has not
 23 consented to the FTC conducting these depositions and has refused to confer on scheduling them
 while this Motion is pending. The witnesses are (1) a long-time Amazon UX designer (Ryan
 Ogborn) who personally unintentionally enrolled in Prime after encountering what he described
 as a "particularly nasty UPDP [enrollment page] in UK" (*see* Dkt. #90-2 at 237); (2) the Product

1 Manager (Benjamin Goeltz) and (3) lead UX designer (C.R. Brown) assigned to the project that
 2 resulted in Amazon reducing the three-page Iliad Flow to a two-page cancellation flow in or
 3 around April 2023; (4) the Senior Manager (Mary Pat Gotschall) within Amazon's Shopping
 4 organization who managed the UX researchers and designers working on the Customer
 5 Frustration Elimination Program (*see* Dkt. #69 ¶¶ 188-208); (5) a long-time Product Manager
 6 (Sara Mead) in Amazon's Shopping organization (*see also infra* p. 11); (6) a member of Prime's
 7 content testing team (Caroline Moeller) who played a central role in coordinating and evaluating
 8 Amazon's plans to change its enrollment and cancellation flows in 2020 and 2021 (*see, e.g.*, Dkt.
 9 #139-1 at 104, 127-28 139-42); and (7) Amazon itself, pursuant to Federal Rule of Civil
 Procedure 30(b)(6).

10 **C. Amazon's Shifting Positions on the FTC's Deposition Requests**

11 When the parties submitted their Joint Status Report and Rule 26(f) conference report last
 12 August, the FTC requested permission to take up to 30 fact-witness depositions—its best
 13 estimate at the time for how many depositions would be appropriate. *See* Dkt. #65 at 5-10.
 14 Amazon opposed the request, proposing instead that “if either party believes additional
 15 depositions are necessary after it has exhausted the limit of 10, it may meet and confer with the
 16 opposing party and, if appropriate, seek leave from the Court.” *Id.* at 14. In September 2023, the
 17 Court entered a standard Case Management Order (Dkt. #66, *as amended*, Dkt. #175) that did
 not address the deposition dispute.

18 In mid-May 2024, the FTC asked Amazon to consent to the FTC taking up to 35 fact-
 19 witness depositions. Ex. A, Att. 6 at 3. The FTC identified 16 witnesses it planned on deposing.
 20 That number was later reduced to 15 witnesses after the parties reached an agreement regarding
 21 one witness. Amazon did not consent to the deposition of the 15 identified witnesses or to the
 22 FTC's request to take a total of 35 fact-witness depositions. Ex. A, Att. 7 at 3. After additional
 23 back-and-forth and a meet-and-confer, the FTC, on June 11, informed Amazon that it planned to
 file this Motion. Ex. A, Att. 4 at 17. Amazon responded by making what it described as a

1 “compromise offer”—the FTC could proceed with the 15 identified deponents and Amazon
 2 would “consider additional requests for depositions.” *Id.* at 16. Given that offer and the fact that
 3 the Court had granted the FTC’s motion to modify the scheduling order (ultimately moving the
 4 close of discovery from September 2023 to January 2024), the FTC agreed to further confer with
 5 Amazon before filing this Motion. *Id.* at 15.

6 Later in June, the FTC took Amazon up on its offer to “consider additional requests for
 7 depositions.” Specifically, the FTC asked Amazon to consent to the FTC’s taking the
 8 depositions of Benjamin Goeltz and Mary Pat Gotschall. Ex. A, Att. 12 at 3, Att. 13 at 2. In
 9 response, Amazon declared it “not efficient . . . to consider piecemeal requests for depositions”
 10 and asked the FTC to “identify all witnesses [it] seeks to depose in this matter”—a new addition
 11 to Amazon’s “compromise offer.” Ex. A, Att. 13 at 2. By this time, the FTC already had
 12 explained it anticipated the remaining deponents would almost all be from among the 75
 13 Amazon document custodians to which the FTC and Amazon had agreed. Ex. A, Att. 10 at 3,
 14 Att. 14 at 4. Beyond that, the FTC explained, the FTC was unable to identify specific deponents
 15 at that time. The FTC noted, for example, that after producing just 30,000 documents during the
 16 investigation, and less than 85,000 during the first eight months of discovery, Amazon had
 17 produced 136,000 documents on May 17, 2024 alone. Ex. A ¶ 5 & Att. 14 at 4. The FTC, of
 18 course, wanted a chance to look at those documents—in addition to completing some of its
 19 scheduled depositions—before deciding who else to question. Troublingly, while demanding the
 20 FTC’s final list of proposed deponents, Amazon did not disclose that it would soon be producing
 21 an *additional* 215,000 documents, which it did on July 12, 2024. Ex. A ¶ 5.

22 About two months into the parties’ conferral on this Motion, Amazon stated it was
 23 “willing to negotiate an agreement on the total number of depositions the FTC may notice in this
 case.” Ex. A, Att. 15 at 4. But when the FTC asked for Amazon’s counterproposal regarding the
 total number of depositions (Ex. A, Att. 4 at 5), Amazon again moved the goalposts, stating that
 because the FTC had not provided certain “information”—primarily, a final list of all 35

1 deponents—Amazon was “not in a position to offer a counterproposal to the FTC’s proposed 35
 2 deposition limit.” Ex. A, Att. 16 at 3.

3 **II. ARGUMENT**

4 Courts “must grant leave” to exceed ten depositions “to the extent consistent with Rule
 5 26(b)(1) and (2).” Fed. R. Civ. P. 30(a)(2). Rule 26(b)(1) and (2), in turn, establish the general
 6 rules regarding proportionality in discovery. Although parties “should *ordinarily* exhaust their
 7 allowed number of depositions before making a request for additional [depositions],”
Thykkuttathil v. Keese, 294 F.R.D. 597, 600 (W.D. Wash. 2013) (emphasis added), “there is no
 8 reason to conclude that if the need for additional depositions is clear from the outset the court
 9 must engage in arbitrary delay before entertaining a motion for depositions in excess of the
 10 presumptive 10.” *Aerojet Rocketdyne, Inc. v. Global Aerospace, Inc.*, 2018 WL 5993585, at *2
 11 (E.D. Cal. Nov. 6, 2018); *see also Mintz v. Mark Bartelstein & Assocs., Inc.*, 2012 WL 12886492
 12 at *1 (C.D. Cal. Sept. 14, 2012) (“If the motion is made before ten depositions are completed, the
 13 moving party must show, among other things, that there are multiple parties and that the
 14 complexity of the case warrants more than ten depositions.”). Some courts, including in this
 15 district, have held that the party seeking to increase deposition limits generally must make a
 16 “particularized showing” of the need for additional depositions. *Thykkuttathil*, 294 F.R.D. at
 17 600. Other courts, including in this circuit, have “required only a Rule 26(b)(2) ‘benefits versus
 18 burden approach’ and sought to ensure ‘the discovery is not unreasonably cumulative or
 19 duplicative.’” *City of Lincoln v. United States*, 2018 WL 3917711, at *8 (E.D. Cal. Aug. 16,
 20 2018) (quoting *Laryngeal Mask Co. v. Ambu A/S*, 2009 WL 10672436, at *4 (S.D. Cal. July 17,
 21 2009)). Regardless of which approach the Court takes, the FTC meets its burden, given the
 22 complexity and importance of this case.

23 **A. Compelling Circumstances Support the Need for Excess Depositions.**

24 Courts repeatedly have held that, in complex cases, the ten-deposition limit should be
 25 adjusted upwards. *See, e.g., Couch v. Wan*, 2011 WL 4499976, at *2 (E.D. Cal. Sept. 27, 2011)

1 (finding “the complexity of this case justifies exceeding the presumptive deposition limit,” in
 2 part because there were “multiple defendants” and “multiple events” at issue); *Mintz*, 2012 WL
 3 12886492, at *3 (allowing excess depositions where not disproportionate to “the amount in
 4 controversy or the complexity of the claims”); *Egana v. Blair’s Bail Bonds, Inc.*, 2019 WL
 5 8277616, at *2 (E.D. La. Jan. 23, 2019) (“Courts allow parties to exceed the ten-deposition limit
 6 when the case involves complex facts or claims.”).

7 This Court implicitly recognized the same principle in the *FTC v. Amazon* antitrust
 8 matter. There, in the parties’ initial Joint Status Report, the FTC sought permission to conduct
 9 630 hours of party-witness depositions (equivalent to 90 full-day depositions) and 350 hours of
 10 nonparty-witness depositions (equivalent to 50 full-day depositions). *See* Joint Status Report and
 11 Discovery Plan, *FTC v. Amazon.com, Inc.*, No. 23-cv-1495-JHC, Dkt. No. 135, at 27 (Dec. 15,
 12 2023). Amazon countered that only 10 depositions of party witnesses should be permitted, with
 13 unlimited third-party depositions. *Id.* at 33-36. The Court referred to Amazon’s proposed 10-
 14 deposition limit as “comically low,” later clarifying that it understood why Amazon had taken
 15 that position. *See* Feb. 8, 2024 Hearing Tr., *FTC v. Amazon.com, Inc.*, No. 23-cv-1495-JHC,
 16 Dkt. No. 153, at 7, 14. After additional briefing, the Court permitted 80 party depositions and 70
 17 nonparty depositions per side, without requiring either side to identify the specific witnesses it
 intended to depose *ex ante*. *See* Order re: Deposition Limits, *FTC v. Amazon.com, Inc.*, No. 23-
 cv-1495-JHC, Dkt. No. 166 (Feb. 20, 2024).

18 Here, the FTC’s request for 35 depositions is both reasonable and proportionate to the
 19 needs of the case. The FTC’s allegations address at least seven years of misconduct by Amazon
 20 and relate to two distinct matters: the methods by which consumers enroll in Prime, and the
 21 methods by which consumers cancel their Prime subscriptions. As of three years ago, Amazon
 22 readily admitted that at least 500 employees had worked on Prime enrollment and cancellation.
 23 Ex. A, Att. 1. The FTC plans to depose employees from several different Amazon organizations
 and project teams, including Prime Retention, Prime Acquisition, Shopping, Global Prime

1 Experience (GPX), Content Experimentation & Optimization, Customer Service, and Prime
 2 Finance. Additionally, the FTC must conduct discovery related to far more than questions of
 3 whether Amazon's enrollment and cancellation processes were lawful. Other relevant issues
 4 include (1) each of the three Individual Defendants' roles in and liability for Amazon's
 5 misconduct, (2) whether there is a likelihood of recurrence, which would justify a permanent
 6 injunction against Defendants, (3) the scope of any such injunction against each Defendant, (4)
 7 whether each Defendant acted with sufficient culpability to justify an award of civil penalties,
 8 and (5) the appropriate amount of consumer redress and civil penalties.

9 The traditional proportionality factors also support the FTC's request. *See* Fed. R. Civ. P.
 10 26(b)(1) (listing, among other factors, the "importance of the issues at stake in the action," "the
 11 amount in controversy," and "the parties' resources"). The FTC alleges that Amazon unlawfully
 12 charged millions of consumers for Prime memberships that they did not know about or agree to,
 13 or that they reasonably thought they had cancelled. Even setting aside the monetary harm, Prime
 14 is one of, if not the, country's largest subscription programs, and Amazon's years-long scheme to
 15 unlawfully enroll people and prevent them from cancelling is therefore of significant public
 16 importance. Amazon's resources, moreover, are, unlimited for all practical purposes.⁴

17 Additionally, contrary to Amazon's repeated assertions, there is no reason to expect the
 18 FTC's depositions to be duplicative or cumulative. Amazon, for example, has argued that the
 19 FTC's depositions are unnecessary because of the FTC's pre-complaint investigation. That
 20 argument is legally and factually deficient. First, on the law, as the FTC stated in the initial Joint
 21 Status Report, the FTC is aware of no case in which a Court relied on a pre-suit investigation to
 22 limit a party's litigation discovery. Dkt. #65 at 7-8. Amazon, likewise, has identified no such
 23 case to date. Second, on the facts, the pre-suit investigation is no substitute for discovery. As a
 threshold matter, the investigation serves an entirely different purpose from litigation discovery.

⁴ Amazon's most recently quarterly SEC filing disclosed over \$71 billion in "cash and cash equivalents" on hand and, from the first half of 2024 alone, \$291 billion in net sales (\$21 billion from subscription fees for Prime and other services). *See* Amazon.com, Inc., Quarterly Report (From 10-Q), at 4, 6, 20 (Aug. 2, 2024).

1 See, e.g., *United States v. Witmer*, 835 F. Supp. 208, 219 (M.D. Pa. 1993), *aff'd*, 30 F.3d 1489
 2 (3d Cir. 1994) ("[U]sing [civil investigative demands] for a purpose other than to determine if
 3 there is sufficient evidence to file suit would be improper."). Furthermore, as explained above,
 4 the FTC, when selecting investigational hearing witnesses and then questioning them, had only a
 5 fraction of the information it now possesses. *See supra* p. 3.

6 Beyond its argument based on the FTC's investigation, Amazon has asserted the
 7 depositions will be duplicative of each other and the documents produced by Amazon. Ex. A,
 8 Att. 11 at 4. The FTC has no interest in conducting duplicative depositions. For the reasons
 9 described above, however, the complexity of Amazon's operations, the long period of over
 10 which the misconduct occurred, and the number of employees involved necessitate extra
 11 depositions. That is particularly true given that, throughout the FTC's IHs and depositions,
 12 witnesses have expressed foggy recollections of key events and an unwillingness or inability to
 13 interpret their colleagues' words or writings. This makes obtaining direct testimony from
 14 additional witnesses who wrote the documents at issue and participated in key events all the
 15 more important. *See, e.g., City of Lincoln*, 2018 WL 3917711, at *8 ("While the City has had the
 16 opportunity to pursue the same discovery by less intrusive means, the court finds that 'oral
 17 testimony likely can prove these allegations and that other less-intrusive discovery devices may
 18 be ineffective.'" (quoting *Couch*, 2011 WL 4499976, at *2)).

19 Similarly, Amazon's argument that the FTC should simply rely on the documents
 20 Amazon produced (Ex. A, Att. 11 at 4) would be unconvincing in any case, but is especially so
 21 here. The evidence is clear that Amazon went out of its way to *avoid* creating a written record of
 22 its wrongdoing. *See, e.g.*, Dkt. #90-2 at 233 (Amazon vice president: "[I]t's not appropriate to
 23 have this conversation over email, and increasingly a mass one at that (just adding P&C does
 24 little)."); *cf. United States v. Google LLC*, --- F. Supp. 3d ----, 2024 WL 3647498, at *133-34
 25 (D.D.C. Aug. 5, 2024) (describing creation of "faux privileged materials" and instructions that
 26 employees "avoid using certain antitrust buzzwords in their communications," and writing that

1 “the court is taken aback by the lengths to which Google goes to avoid creating a paper trial for
 2 regulators and litigants”). For all of these reasons, the FTC’s request for 35 depositions is fully
 3 justified, and Amazon will be unable to “place before the Court specific evidence demonstrating
 4 that the burden or expense outweighs [the additional depositions’] likely benefit.” *Mintz*, 2012
 5 WL 12886492, at *3.

6 **B. There Is No Basis for Forcing the FTC to Identify All of Its Intended
 7 Deponents Now.**

8 Amazon repeatedly has refused to counter the FTC’s request for 35 fact-witness
 9 depositions until the FTC provides a list of all 35 witness it plans to depose. Amazon’s position
 10 is untenable, especially in light of its delayed document productions. *See supra* pp. 3, 6.
 11 Additionally, the FTC has identified 22 deponents and has further explained that the remaining
 12 deponents will likely be selected from among the 50 other document custodians that Amazon has
 13 searched for responsive documents. The FTC continues to review Amazon’s recent document
 14 productions, in addition to the deposition testimony it is in the process of obtaining, to decide on
 15 further witnesses. This approach is entirely reasonable. For example, the FTC only requested
 16 proposed deponent Sara Mead’s testimony after another deponent said he could not remember
 17 whether Jamil Ghani had said what Ms. Mead’s notes reflect: that Amazon should put “good
 18 design principles” on the backseat to mitigate potential member losses, and then fix the resulting
 19 “terrible CX [customer experience]” in the future. Ex. A, Att. 3 at 3.

20 Additionally, Amazon’s apparent argument that the Court should wait until the FTC has
 21 definitively identified all witnesses it plans to depose before the Court grants it permission to
 22 proceed would be more inefficient for the parties and the Court than simply granting this Motion
 23 or otherwise setting a limit on the number of depositions. The parties have already spent three
 months meeting and conferring on this issue, including exchanging at least 14 letters and emails.
 Nevertheless, Amazon has still provided no position, for example, on the FTC’s two-month-old
 request to depose Mary Pat Gotschall and Benjamin Goeltz. Extending the process further will
 almost certainly lead to the FTC presenting one or more time-sensitive motions to depose

1 specific witnesses. It is for this exact reason—"eliminating the need for special motions"—that
2 parties are encouraged to address the need for extra depositions up-front. *U-Haul Co. of Nevada,*
3 *Inc. v. Gregory J. Kramer, Ltd.*, 2013 WL 1249702, at *2 (D. Nev. Mar. 26, 2013).

4 **III. CONCLUSION**

5 For the foregoing reasons, the FTC respectfully requests the Court grant it leave to
6 conduct up to 35 fact-witness depositions.

7 **LOCAL RULE 7(e) CERTIFICATION**

8 I certify that this memorandum contains 4,062 words, in compliance with the Local Civil
9 Rules.

10 **LOCAL RULE 37(a)(1) CERTIFICATION**

11 I certify that counsel for the FTC has in good faith conferred with counsel for Defendants
12 in an effort to resolve this dispute without court action. Counsel for the parties met and
13 conferred by phone on June 5, 2024, with the following attorneys present: Evan Mendelson
14 (FTC), Olivia Jerjian (FTC), Thomas Maxwell Nardini (FTC), Sana Chaudhry (FTC), Anthony
15 Saunders (FTC), Laura Flahive Wu (Amazon), Kevin Kelly (Amazon), Haley Johnson
16 (Amazon), Joseph Reiter (Amazon), and James Howard (Amazon). Counsel also exchanged
17 written correspondence relating to this dispute at least the following dates: May 17, 2024; May
18 20, 2024; May 24, 2024; May 29, 2024; June 4, 2024; June 6, 2024; June 10, 2024; June 24,
19 2024; July 1, 2024; July 10, 2024; July 18, 2024; July 26, 2024; July 31, 2024; and August 13,
21 2024.

1 Dated: August 28, 2024

2 /s/ Evan Mendelson
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